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November 28, 2017

VIA ECF

Hon. Katharine H. Parker
United States Magistrate Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1950
New York, New York 10007

**Re: MiMedx Group, Inc., *et al.* v. Sparrow Fund Management LP, *et al.*,
No. 1:17-cv-07568 (S.D.N.Y.)**

Dear Magistrate Judge Parker:

As you know, we were recently retained as counsel for Defendants John Fichthorn and BR Dialectic Capital Management, LLC. We write to respectfully submit the Declaration of John Fichthorn, attached hereto as Exhibit 1, in connection with plaintiffs' motion styled as a "Motion for Expedited Discovery on an Emergency Basis," seeking information about defendant Viceroy Research (Dkt. 14). While the previously-filed opposition memorandum addressed the applicable law, we thought it be helpful to ascertain whether our clients actually had information that would permit service of process on Viceroy. Mr. Fichthorn's declaration confirms that they do not.

We will look forward to addressing plaintiffs' discovery motion, as well as defendants' motion to dismiss, at Friday's hearing. Thank you for your attention to this matter.

Respectfully submitted,

/s/ *Seth D. Berlin*

Seth D. Berlin

cc: Counsel of Record (via ECF)

Exhibit 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MIMEDX GROUP, INC. and
SEAN MCCORMACK,

Plaintiffs,

v.

SPARROW FUNDS MANAGEMENT, LP,
A/K/A “AURELIUS VALUE”; VICEROY
RESEARCH; JOHN FICHTHORN; BR
DIALECTIC CAPITAL MANAGEMENT,
LLC; and DOES 1-10, inclusive,

Defendants.

Case No. 1:17-cv-07568 (PGG) (KHP)

DECLARATION OF JOHN FICHTHORN

Pursuant to 28 U.S.C. § 1746, I, John Fichthorn hereby declare under penalty of perjury:


1. I am the co-founder and Head of Alternate Investments of Defendant BR Dialectic Capital Management, LLC (“Dialectic”). I am also personally named as a defendant in this action. I make this declaration in opposition to plaintiffs’ motion styled as a “Motion for Expedited Discovery on an Emergency Basis,” and, in particular, to confirm that neither Dialectic nor I have any information that would allow the person or entity known as Viceroy Research (“Viceroy”) named as a defendant in this action to be served with process.
2. Although I am aware that Viceroy has a publicly available email listed on its website and a Twitter handle, I do not know of any information that would permit plaintiffs to serve it with papers in this action.
3. In addition, at my direction and under my supervision, employees of Dialectic searched my email, messaging accounts, other digital files, and notes, as well as those of the

seven other employees of Dialectic. That search did not locate any documents containing Viceroy's identity, including an address or other information that would allow Viceroy to be served with of process in this action. Based on the foregoing, neither Dialectic nor I have any such information in our possession, custody or control.

4. Although Dialectic and I have no information to provide in response to plaintiffs' motion, I do want to emphasize that, as an investment professional, it is my experience that entities and individuals who discuss publicly traded companies, both favorably and unfavorably, provide essential viewpoints and context to assist investors in making investment decisions, including comments by anonymous online entities such as Viceroy. Without anonymity, those with important perspectives regarding publicly traded companies may be unwilling or unable to make their views public, particularly comments regarding corporations such as plaintiff MiMedx Group, Inc. that have repeatedly filed lawsuits against their critics. Investors are harmed when such viewpoints are suppressed. I believe that financial markets work best when participants have as wide a variety of perspectives as possible, including views expressed by anonymous speakers such as Viceroy.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: November 29, 2017


John Fichthorn